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State v. McClure Appellant's Reply Brief Dckt. 41571

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 41571
)	
v.)	ELMORE COUNTY NO. CR 1999-38
)	
JASON MCCLURE,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ELMORE

HONORABLE LYNN NORTON
District Judge

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247

JASON C. PINTLER
Deputy State Appellate Public Defender
I.S.B. #6661
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
DEFENDANT-APPELLANT

ATTORNEY FOR
PLAINTIFF-RESPONDENT

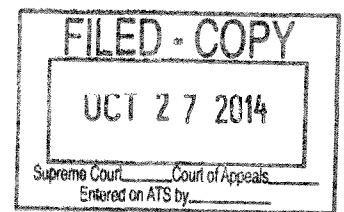


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STATEMENT OF THE CASE

Nature of the Case

Jason McClure appeals from the district court's order finding him in contempt of court. He asserts that the district court lacked subject-matter jurisdiction over his case because the purported charging instrument was not notarized; therefore, it was not an affidavit under Idaho law and did not confer jurisdiction. In response, the State makes two arguments: 1) that an affidavit is not required to be notarized; and 2) that a non-notarized document purporting to be an affidavit confers subject-matter jurisdiction in contempt cases. The State's arguments are without merit.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. McClure's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Is the district court's judgment holding Mr. McClure in contempt of court void for lack of subject-matter jurisdiction?

ARGUMENT

The District Court's Judgment Holding Mr. McClure In Contempt Of Court Is Void For Lack Of Subject-Matter Jurisdiction

A. Introduction

Idaho Criminal Rule 42 applies to all “contempt proceedings brought in connection with a criminal proceeding,” and, where the alleged contempt is for a violation of a court order, the action “must be commenced by a motion and affidavit.” I.C.R. 42. A deputy district court clerk signed a document entitled “Motion and Affidavit in Support of Contempt Proceedings” initiating contempt proceedings; however, Mr. McClure asserts that the document was not an affidavit because it was not notarized as required by law and, therefore, the document did not confer subject-matter jurisdiction over Mr. McClure’s case to the district court.

In response, the State first asserts that “the contempt proceedings were in fact commenced by an affidavit, as recognized by Idaho precedent.” (Respondent’s Brief, pp.4-6.) Next the State asserts that Mr. McClure has failed to show that an affidavit lacking a notary stamp is a jurisdictional defect. (Respondent’s Brief pp.4, 6-7.) Both of these arguments are without merit.

B. At The Time The Purported Charging Instrument Was Filed, Affidavits Were Required To Be Notarized Under Idaho Law

Just last year, the Idaho Supreme Court held that a death row inmate failed to support claims raised in a successive post-conviction petition with admissible evidence, because a witness’ “declaration plainly is not an affidavit because it lacks notarization.” *Fields v. State*, 155 Idaho 532, 537 (2013) (citing *Kelly v. State*, 149 Idaho 517, 523

(2010)). In its Respondent's Brief, the State notes that the *Fields* opinion cited to a Black's Law Dictionary definition of the term "affidavit," and insinuates that the Court adopted a definition of affidavit under Idaho law that does not require a notary, provided the document is sworn "before an officer authorized to administer oaths." (Respondent's Brief, pp.5-6.) However, Mr. McClure asserts that the Court's holding in *Fields* is contained in the words of the opinion itself, not in its bracketed quotation of Black's Law Dictionary.

Idaho law was amended effective July, 1 2013, and now allows that, "Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to a law of this state, any matter is required ... to be supported ... by ... affidavit, in writing, of the person making the same ... such matter may with like force and effect be supported ... by the unsworn certification or declaration, in writing" I.C. § 9-1406(1). If this statute were in effect at the time D. Palmer charged Mr. McClure with contempt, the document would have clearly conferred subject-matter jurisdiction upon the court. However, this statute was not in effect when the Motion and Affidavit in Support of Contempt Proceedings was filed on June 27, 2012, and there is nothing in the statute itself which could be read to retroactively grant subject-matter jurisdiction in this case. Just as the "declaration" in *Fields* was not an affidavit because it was not notarized, D. Palmer's non-notarized filing was not an affidavit in the present case, and the district court did not obtain subject-matter jurisdiction. The State's argument is without merit.

C. The District Court Lacked Subject-Matter Jurisdiction Over Mr. McClure's Alleged Contempt

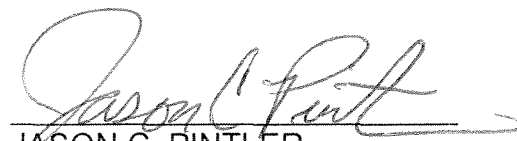
The State argues that the lack of a notary stamp on the purported charging document is not a jurisdictional defect. (Respondent's Brief, pp.6-7.) The State is incorrect.

"In a contempt proceeding the court acquires no jurisdiction to proceed until a sufficient affidavit is presented." *Jones v. Jones*, 91 Idaho 578, 581 (1967) (citing *Harkness v. Hyde*, 31 Idaho 784 (1918)). An invalid charging document does not confer subject-matter jurisdiction upon the district court. See *State v. Lute*, 150 Idaho 837, 840-841 (2011). Judgments and orders made without subject-matter jurisdiction are void. *State v. Urrabazo*, 150 Idaho 158, 163 (2010). Simply put, the purported charging instrument was not notarized; therefore, it was not an affidavit; therefore, it did not confer subject matter jurisdiction upon the district court. The State's argument is without merit.

CONCLUSION

Mr. McClure respectfully requests that this Court vacate the district court's Non Summary Contempt Findings and Sanctions Following Guilty Plea.

DATED this 27th day of October, 2014.

A handwritten signature in black ink, appearing to read "Jason C. Pintler", written over a horizontal line.

JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of October, 2014, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

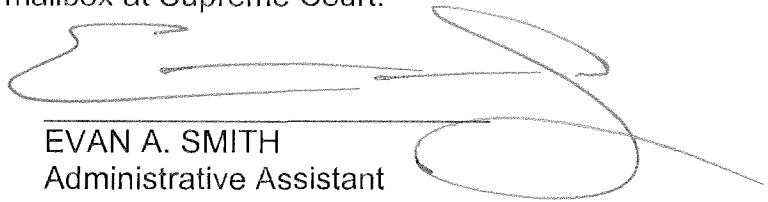
JASON MCCLURE
PO BOX 983
MOUNTAIN HOME ID 83647

LYNN NORTON
DISTRICT JUDGE
E-MAILED BRIEF

TERRY S RATLIFF
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH
Administrative Assistant

JCP/eas